LEASE AND MANAGEMENT AGREEMENT FOR RESTAURANT PREMISES AT ELMWOOD GOLF COURSE

THIS LEASE AND MANAGEMENT AGREEMENT ("Agreement") is entered into this 1st day of January, 2021 ("Effective Date"), by and between the City of Pueblo, a Municipal Corporation, 1 City Hall Place, Pueblo, Colorado 81008 ("City") and Bregar Golf, LLC, 41 Tierra Casa Drive, Pueblo, Colorado 81005 ("Manager").

RECITALS

WHEREAS, the City owns and operates a municipal golf course which is open to public play and located on the premises commonly known as Elmwood Golf Course, 3900 Thatcher Avenue, Pueblo, Colorado (the "Golf Course"); and

WHEREAS, there is located on the Golf Course a restaurant and lounge; and

WHEREAS, the City desires the services of Manager to occupy, manage, operate, and maintain the restaurant and lounge, including the liquor licensed premises; and

WHEREAS, Manager warrants it can operate restaurants and lounges, including liquor licensed premises.

In consideration of the foregoing recitals, and the terms and conditions set forth herein, the Parties agree as follows:

TERMS AND CONDITIONS

SECTION 1. DEFINITIONS. As used herein, the following words and phrases shall have the following meanings:

(a) "Leased Premises" means and includes the entire Elmwood Golf Course clubhouse and facilities, but excluding (i) the pro shop consisting of approximately 1,056 square feet of floor area located on the east side of the clubhouse, and (ii) the storage room consisting of approximately 567 square feet of floor area located in the basement thereof. The Leased Premises shall include the Restaurant and Lounge and the Optional Premises, and shall be attached hereto as Exhibit A.

(b) "Restaurant and Lounge" means the restaurant and lounge located in the Leased Premises.

(c) "Optional Premises" means the buildings located on the golf course, the patio located outside but adjacent to the clubhouse, and the golf course itself.

(d) "Director" means the City's Director of Parks and Recreation or any person that the Director of Parks and Recreation may authorize to act in his or her stead.

(e) "Sponsorship Contract" means any contractual arrangement in which a third party business pays for the right to have its product used or sold at the Leased Premises, or to place advertising signs, banner, and other materials at the Leased Premises.

(f) "Sponsorship Events" means events, promotions, parties, celebrity appearances, social functions, tournaments, contests, product demonstrations, product promotions, and other events at the Leased Premises, or the placement of advertising signs, banners, announcements, and similar materials at the Leased Premises under a Sponsorship Contract.

SECTION 2. EXHIBITS TO AGREEMENT.

Exhibit A: Leased Premises, Restaurant and Lounge, and Optional Premises Floor Plan.

Exhibit B: List of City's Property - Inventory.

Exhibit C: PERA Questionnaire.

SECTION 3. GRANT OF EXCLUSIVE RIGHT TO OCCUPY AND OPERATE LEASED PREMISES.

(a) City grants to Manager as an independent contractor the exclusive right to occupy, use, and operate the food and beverage operations at the Leased Premises, subject to:

(1) The City's right to enter the Leased Premises without notice to Manager to inspect the premises, to perform maintenance, and to carry out any other action of City. City shall be responsible for all routine maintenance, repair, and replacement of the plumbing system, roof, heating and air conditioning system, electrical system, parking lot, and building exterior. Manager shall be responsible for minor repairs and maintenance, which are defined as any repairs or maintenance with a dollar value of five hundred dollars ($500.00) or less, including but not limited to the changing of light bulbs and the interior cleaning and upkeep of restrooms and hallways. Manager shall also be responsible for the repair and maintenance of all kitchen appliances. Kitchen appliances are devices or pieces of equipment designed to perform a specific task, including, but not limited to, refrigerators, freezers, stoves, fryers, mixers, and microwaves. Any replacement of kitchen appliances must be approved by the Director prior to such replacement, and any such replacement will be at the sole cost of Manager. Kitchen appliances are fixtures owned by City, a record of which shall be kept in the Inventory (later defined).

(2) The City’s right to enter into Sponsorship Contracts without notice to Manager. Manager shall comply with all terms of any Sponsorship Contracts, including but not limited to using

or selling the sponsor's product and/or placing advertising signs, banners, and other materials at the Leased Premises.

(3) The City's right to inspect Manager's records, including but not limited to sales receipts, inventory lists, purchasing orders, payroll, financial records, tax returns, and bank statements of Manager, or any subcontractor contracted by Manager to operate all or a portion of the Restaurant and Lounge business on the Leased Premises.

(4) All other terms of this Agreement. Any agreement between Manager and a subcontractor must include a provision reserving all of the City's rights under this Agreement and law, and the subcontractor agreeing thereto.

SECTION 4. RENT; LATE FEES; INTEREST.

(a) Manager shall pay to City $3,000 per month from January 1, 2021 through December 31, 2021 as rent due for the use of the Leased Premises. Beginning January 1, 2022, Manager shall pay to City $3,500 per month as rent due, subject to an annual three percent (3%) increase each subsequent year upon the anniversary of the Effective Date.

(b) Manager shall pay to City a late fee in the amount of $100 for any rent payment paid more than ten (10) days after the first day of the month. Manager shall pay to City a late fee in the amount of $500 for any rent payment paid more than fifteen (15) days after the first day of the month.

(c) All rent shall be due without notice, offset, or deduction on the first day of each month, and shall be payable at the place designated in this Agreement for Notice to City. Rent shall be paid into the City's Golf Course Enterprise. All rent, fees, and other sums due under this Agreement shall bear interest at the rate of eight percent (8%) per annum from the date the sum first becomes due, compounded monthly.

SECTION 5. UTILITIES. Manager shall pay before delinquent the charges for all utilities, including but not limited to, water, gas, electric, cable, satellite, and internet.

SECTION 6. SECURITY DEPOSIT.

(a) City shall continue to retain Manager's deposit in the sum of $3,000 to ensure performance of its obligations under this Agreement. In the event that Manager fails, neglects, or refuses to pay any rent, fee, or other sum due under this Agreement, or fails to perform any obligation under this Agreement, then City may, in its sole and absolute discretion, draw from this security deposit to remedy Manager's default. Nothing contained in this Agreement shall require City to remedy Manager's default in this manner, and City may instead, in its sole and absolute discretion, refuse to remedy Manager's default by drawing on the security deposit, and instead pursue the remedies for default provided in this Agreement or by law.

(b) In the event that City draws from this security deposit to remedy Manager's default, City shall notify Manager in writing and require Manager to replenish the deposit to its original level. Failure of Manager to comply with this section shall constitute a material breach of this Agreement.

(c) Within sixty (60) days after this Agreement expires or terminates, City shall refund to Manager the security deposit, less any portion of the security deposit that City has applied to remedy any of Manager's defaults under this Agreement, including but not limited to unpaid rent, other sums due under this Agreement, and any damages or cleaning that may be required, whether discovered during the term of this Agreement or afterward.

SECTION 7. CITY TO PROVIDE CERTAIN CAPITAL.

(a) City has paid for certain capital improvements to the Leased Premises and purchased the equipment and supplies presently located on the Leased Premises, including stoves, ovens, plates, dishes, furniture, bars, freezers, and the like, for Manager's use on the Leased Premises. All such improvements, equipment, and supplies shall remain property of the City and shall be returned to the City at the termination of this Agreement. Manager shall confirm that all equipment and supplies are tagged with City identification within one (1) month of signing of this document. Any capital improvements, equipment, or other supplies purchased by Manager, whether to improve the Leased Premises or to replace existing capital improvements, equipment, or other supplies, shall become the property of City upon termination of this Agreement.

(b) The City may in its discretion reimburse Manager for additional capital expenses incurred by Manager for equipment and furniture to be used by Manager at the Leased Premises, provided that:

(1) Manager obtains written approval from the City for the capital expenses prior to incurring any expenses; and

(2) Manager provides a detailed proposal to the City describing the equipment and furniture to be purchased, the reason the purchase is necessary, and an estimate of the costs for the equipment and furniture; and

(3) The capital expenses are incurred only for restaurant related equipment and furniture delivered to and used solely at the Leased Premises; and

(4) Receipts for all purchases are provided immediately after the purchases are made.

SECTION 8. SPONSORSHIP CONTRACTS

(a) The City reserves the exclusive right to enter into Sponsorship Contracts which may affect the Leased Premises or the operation of the Restaurant and Lounge business at any time that the City determines, in its sole and absolute discretion, that such Sponsorship Contracts are desirable.

(b) Manager shall not enter into any Sponsorship Contract without the prior written approval of the City.

(c) Any payment, fee, or other compensation that the City receives under a Sponsorship Contract shall be solely the City's property.

(d) In the event that any term of this Section, or any term of this Agreement pertaining to Sponsorship Contracts or Sponsorship Events, conflicts with or is construed to conflict with any provision of any other contract, lease, or agreement between the City or any of its enterprises and Manager, the provisions of this Agreement shall control.

SECTION 9. MANAGER'S ADDITIONAL OBLIGATIONS. Manager shall perform and comply with the following obligations, restrictions, and limitations:

(a) Operate, staff, manage, clean, repair, keep clean and sanitary, maintain, and promote the Restaurant and Lounge, Optional Premises, fixtures, and equipment, including the freezer units, providing food and beverage service in all areas of the Licensed Premises, including but not limited to alcoholic beverages. Manager shall perform these duties with reasonable care according to the highest standards in the industry.

(b) Hire, supervise, train, and schedule all employees and subcontractors needed and required for the efficient operation, maintenance, management, and promotion of the Restaurant and Lounge and for sale and service of alcoholic beverages. It is expressly understood and agreed that all employees hired by Manager shall be the employees of Manager, and there shall be no contractual obligations or employer-employee relationship between the City and such employees. Manager shall provide all workers' compensation insurance for its employees in accordance with the laws of the State of Colorado and furnish Director with satisfactory proof that such insurance is in effect.

(c) Maintain the security and inventory of, and maintain in good condition and repair, all City equipment, fixtures, and machinery used by Manager or placed under Manager's custody and control by City. An initial inventory of such machinery, fixtures, and equipment shall be prepared for the Leased Premises and shall be signed by the Director and Manager and attached hereto as Exhibit B (the “Inventory”). Director and Manager shall annually update such Inventory. Repairs, replacement, and disposal of any items on the inventory shall be approved by the Director annually or such earlier time as requested by Manager. Any machinery, fixtures, or equipment purchased by Manager to replace existing machinery, fixtures, or equipment listed in the Inventory, shall become the property of City upon termination of this Agreement.

(d) Keep and maintain separate, accurate, and complete accounts and records of all activities and transactions conducted by Manager or Manager's subcontractor in the Restaurant and Lounge and Optional Premises in accordance with generally accepted accounting principles and sound business practices, which accounts and records shall be available for inspection, copy, and audit by City during normal business hours. Manager shall retain all such accounts and records during the term of this Agreement and for a minimum period of three (3) years after termination of this Agreement. These records and accounts shall be entirely separate from any other business operations that Manager may conduct on the Leased Premises or any other premises.

(e) Comply strictly with all applicable federal, state, and City laws, rules, and regulations.

(f) Keep the Restaurant and Lounge and Optional Premises open for business for no less than a set eight (8) hours a day, each day the golf course is playable. Manager will provide service and catering of food and beverages, including but not limited to alcoholic beverages, throughout all parts of the Leased Premises on such days and at such times as the Leased Premises is open to the public, and on such further days and times as the Director may require in his or her sole and absolute discretion after reasonable consultation with Manager for catering, special events, or Sponsorship Events. Any change in the set hours of operation shall require the prior approval of the Director.

(g) Furnish prompt, courteous, and efficient food and beverage service throughout the Restaurant and Lounge and Optional Premises, including alcoholic beverages, at regular events, special events, and Sponsorship Events according to a menu that the Director shall approve, in his or sole and absolute discretion, after reasonable consultation with Manager. All such products and services shall conform with the requirements of federal, state, and City laws and regulations. Manager shall provide prompt, courteous, and efficient beverage service on the golf course with the golf course beverage cart at all times the golf course is playable. During tournaments or Sponsorship Events, Manager shall provide one beverage cart for every fifty (50) participants.

(h) Purchase, stock, carry, furnish, provide, and replace as needed, at Manager's sole cost and risk, sufficient and adequate food, foodstuffs, beverages, alcohol beverages, equipment, furnishings, and furniture in the Restaurant and Lounge and Optional Premises, in a quality and quantity determined to be adequate by Director in his or her sole and absolute discretion after reasonable consultation with Manager, including but not limited to foodstuffs and beverages for breakfast, lunch, dinner, snacks, banquets, and catering, and tables, chairs, glasses, dishes, and utensils for the Restaurant and Lounge and Optional Premises. The Director shall approve the quality, quantity, and decor of equipment, furniture, furnishings, and fixtures prior to their purchase and placement on the Leased Premises by Manager.

(i) Provide all food and beverage service and catering in a polite and inoffensive manner, ensuring polite conduct and demeanor on the part of Manager's representatives, agents, employees, and subcontractors.

(j) Meet with Director in person at least quarterly to review the menu, prices charged, days and times when food and beverage service must be provided at the Restaurant and Lounge and Optional Premises, days and times when catering must be provided throughout the Leased Premises, stocks of foodstuffs, beverages, equipment, furnishings, and furniture in the Restaurant and Lounge and Optional Premises, upcoming special events, décor, menus, brochures, and sales materials, quality of food and beverages provided, and sales records.

(k) Pay at Manager's sole cost, before same becomes delinquent, all sales, use, property, and other taxes on Manager's property and business conducted on the Leased Premises. Manager shall collect and remit to City all sales taxes on the sale of food, beverages, and merchandise.

(l) Operate and manage the Restaurant and Lounge and Optional Premises as public facilities for the use and benefit of the public on a fair, equal, and nondiscriminatory basis without preferential treatment to any individual, group, or entity. Manager shall comply fully with state and federal anti-discrimination laws, rules, and regulations and specifically agrees that no person shall be denied or refused services or other full or equal use of the Leased Premises, nor denied employment opportunities by Manager as a result of race, creed, color, sex, sexual orientation, age, national origin, ancestry, or disability.

(m) Obtain at Manager's cost and expense all licenses required for the operation of the Restaurant and Lounge and Optional Premises, including but not limited to food service licenses, liquor licenses, and sales and use tax licenses. Upon termination of this Agreement, all such licenses shall remain with the Leased Premises and Manager shall fully cooperate in the transfer and approval of such licenses to City or its designee. For such purposes, Manager hereby irrevocably appoints City its agent and attorney in fact to execute all approvals and instruments required for such transfers. City acknowledges that any required license may be held in the name of a subcontractor of Manager, but any such license shall remain with the Leased Premises and both subcontractor and Manager shall fully cooperate in the transfer and approval of such licenses to City or its designee. Any agreement between Manager and a subcontractor must include a provision keeping all such licenses with the Leased Premises and guaranteeing their transfer and approval in accordance with City’s direction.

(n) Comply with the rules and regulations adopted by the Director relating to the use and operation of the Leased Premises, and all roads, sidewalks, parking lots, and golf cart pathways used in connection with the Leased Premises.

(o) Meet and comply with the nondiscrimination and equal employment requirements of section 1-8-4 of the Pueblo Municipal Code and federal law, which are incorporated herein by reference.

(p) Manager shall not use or allow the Leased Premises to be used for any improper, unlawful, immoral, or objectionable purpose and shall not cause, maintain, or permit any disorderly conduct, nuisance, or waste in, on, or about the Leased Premises. Manager shall not conduct any activity or sell anything at or on the Leased Premises except as specifically authorized in this Agreement. Manager shall conduct all sales and service of alcoholic beverages in compliance with the

Colorado Liquor Code and its regulations, according to the highest standards in the industry, exercising special care to ensure that persons under the age of twenty-one (21) do not purchase, receive, or consume alcoholic beverages on the Leased Premises, that alcoholic beverages are not removed illegally from the Leased Premises, and that visibly intoxicated persons are not served alcoholic beverages. Before allowing any employee to sell or serve alcoholic beverages on the Licensed Premises, Manager shall ensure that the employee receives training in the requirements of the Colorado Liquor Code and its regulations, according to the highest standards in the industry, or demonstrates that they have already completed such training within the last sixty (60) days.

(q) Manager shall not make any improvements of a permanent nature to the Leased Premises or install any fixture or sign thereon, or make any additions, changes, remodeling, or alterations to the same without the prior written approval of the Director and after obtaining all permits required therefor. All improvements, fixtures, signs, additions, changes, remodeling, or alternations shall become and remain the property of the City.

(r) Surrender and deliver to the City at the expiration or termination of this Agreement the Leased Premises and all fixtures, machinery, supplies, and equipment in good order and condition, reasonable wear and tear excepted.

SECTION 10. TERM AND TERMINATION.

(a) The initial term of this Agreement is from January 1, 2021 to December 31, 2025, unless earlier terminated as herein provided. This Agreement may be renewed for two separate successive and consecutive one-year periods in the discretion of the City.

(b) If either party is in default hereunder, the non-defaulting party may give written notice describing the default to the defaulting party. If the defaulting party does not correct such default within twenty (20) days after receipt of said notice, or if the default cannot be corrected within said 20-day period and the defaulting party fails to commence action to correct the default within said 20-day period and thereafter diligently pursues corrective action, the non-defaulting party may upon an additional five (5) days' notice given to the defaulting party terminate this Agreement.

(c) Notwithstanding the foregoing, either party may terminate this Agreement without cause by giving at least sixty (60) days advance written notice to the other party, specifying the date of termination.

(d) Termination of this Agreement shall not automatically terminate or otherwise affect the Elmwood Golf Course Management Agreement between the parties dated December 1, 2008. In the event that the Elmwood Golf Course Management Agreement between the parties dated December 1, 2008 is terminated by either party according to the terms of said agreement, this Agreement shall terminate on the same date.

SECTION 11. INSURANCE, INDEMNITY, AND RELEASE.

(a) Manager shall, prior to execution of this Agreement and on the anniversary of such execution each year, obtain the following insurance coverages and provide to the City Certificates of Insurance evidencing the same. Certificates evidencing insurance coverage shall certify that the insurance coverage is in force and will not be cancelled or reduced without at least thirty (30) days prior written notice to City and that the City is named as an additional insured under the policies. Manager shall maintain all such insurance coverages at all times during the term of this Agreement:

(1) Workers' Compensation Insurance complying with statutory requirements in Colorado and in any other state or states where the work is performed. The Workers' Compensation Insurance policy shall contain an endorsement waiving subrogation against the City.

(2) Commercial General Liability ("CGL") Insurance issued to and covering the liability of Manager, and naming the City of Pueblo and its officers and employees as additional insureds with respect to all work performed by Manager and its subcontractors under this Agreement, to be written on a Commercial General Liability policy form with coverage limits of not less than One Million and No/100 Dollars ($1,000,000.00) per person and occurrence for personal injury, including but not limited to death and bodily injury, and One Million and No/100 Dollars ($1,000,000.00) per occurrence for property damage. This CGL policy shall also provide coverage for fires and for contractual liability assumed by Manager under the provisions of this Agreement.

(3) Comprehensive Automobile Liability Insurance effective during the period of the Agreement, covering the liability of Manager, and naming the City of Pueblo and its officers and employees as additional insureds with limits of liability for injury to one person in any single occurrence of not less than One Million and No/100 Dollars ($1,000,000.00) and for any injury to two or more persons in any single occurrence of not less than One Million and No/100 Dollars ($1,000,000.00). This insurance shall include uninsured/underinsured motorist coverage and shall protect Manager from any and all claims arising from liability for the use of motor vehicles and golf carts both on and off the Leased Premises and whether the motor vehicle or golf cart is owned, hired or used by Manager or its employees.

(4) The coverage and limits enumerated in this insurance provision represent only the minimum insurance required, and the Manager should rely on its expertise to obtain any additional insurance coverage needed for its performance under this Agreement.

(b) Every insurance policy and certificate of insurance specified in subsection (a) of this Section shall contain a provision requiring that Insurer notify the City in writing, in the manner provided in this Agreement, in the event that any such policy or coverage is modified, revoked, terminated, rescinded, or lapses.

(c) Manager forever releases and waives any and all claims, known and unknown, presently existing or arising in the future, and any suit or action in law or equity against City and its officers, employees, agents, and independent contractors ("Released Parties") in any court or tribunal, based on tort, statute, violation of civil rights, or any other legal theory, for any physical injury, psychological injury, death, property damage, or loss that Manager may suffer, related to or caused by

the Released Parties which are in any way related to the Leased Premises, or any vehicle, object, thing, or activity in any building or facility owned, operated, or controlled by the Released Parties.

(d) Manager shall not file, pursue, or prosecute any suit, action, or proceeding, in law or in equity, in any court or tribunal, against the Released Parties, based on tort, statute, violation of civil rights, or any other legal theory, for any physical injury, psychological injury, death, property damage, or loss that Manager may suffer related to or caused by the Released Parties which are in any way related to the Leased Premises or any vehicle, object, thing, or activity in any building or facility owned, operated, or controlled by the Released Parties.

(e) Manager shall indemnify, defend, and hold harmless the Released Parties against any liability for any damages, attorneys fees, and restitution that may be imposed by any court or tribunal in any suit, action, or proceeding in law or equity filed by any person or entity based on tort, statute, violation of civil rights, or any other legal theory, for any physical injury, psychological injury, death, property damage, or loss that Manager may suffer, related to or caused by the Released Parties which are in any way related to the Leased Premises under this Agreement, or any vehicle, object, thing, or activity in any building or facility owned, operated, or controlled by the Released Parties.

(f) Manager shall indemnify, defend, and hold harmless the Released Parties against any liability for any damages, attorneys fees, and restitution that may be imposed by any court or tribunal in any suit, action, or proceeding in law or equity filed by any person or entity based on tort, statute, violation of civil rights, or any other legal theory, for any physical injury, psychological injury, death, property damage, or loss directly or indirectly attributable to Manager or Manager's subcontractors, which are in any way related to the Leased Premises under this Agreement, or any vehicle, object, thing, or activity in any building or facility owned, operated, or controlled by Manager or Manager's subcontractors.

SECTION 12. SUBCONTRACTS.

(a) The parties acknowledge that Manager is the only party with whom City has a lease or contract under this Agreement. To the extent Manager performs any services under this Agreement through subcontractors, Manager shall contractually bind each of its subcontractors by subcontract to all of the terms of this Agreement which are for the benefit of City, and City shall be a third party beneficiary of those subcontracts. City reserves the right to approve or reject, in its sole and absolute discretion, any subcontractor Manager intends to perform services under this Agreement. Manager shall obtain City's approval prior to contracting with any such subcontractor.

(b) Manager shall indemnify, defend, and hold harmless the Released Parties from any and all claims and demands for payment for any services provided by Manager's subcontractors. Manager shall provide or require its subcontractors to maintain at a minimum the types and levels of insurance required of Manager pursuant to this Agreement, and require subcontractors to release City from any and all liability and to indemnify, defend, and hold harmless City from any damage or loss directly or indirectly attributable to the subcontractor.

(c) Manager shall furnish, maintain, and keep in force during the effective term of this Agreement a good and sufficient Performance Bond, in the form provided by City, in an amount not less than the Minimum Annual Guarantee as security for Manager's faithful performance of this Agreement and for the payment of all subcontractors and persons performing labor and furnishing equipment and provisions in connection with the Leased Premises and the return of the Leased Premises and City owned fixtures, inventory, and equipment in good condition upon termination or expiration of this Agreement.

SECTION 13. STATE-IMPOSED MANDATES PROHIBITING ILLEGAL ALIENS FROM PERFORMING WORK

(a) At or prior to the time this Agreement is executed, Manager shall submit to the Purchasing Agent of City its certification that it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement and that the Manager will participate in either the "E-Verify Program" created in Public Law 208, 104th Congress, as amended and expanded in Public Law 156, 108th Congress, as amended, that is administered by the United States Department of Homeland Security or the "Department Program" established pursuant to §8-17.5-102(5)(c) C.R.S. that is administered by the Colorado Department of Labor and Employment in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.

(b) Manager shall not:

(1) Knowingly employ or contract with an illegal alien to perform work under this Agreement;

(2) Enter into an Agreement with a subcontractor that fails to certify to Manager that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement.

(c) The following state-imposed requirements apply to this Agreement:

(1) Manager shall confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement through participation in either the E-Verify Program or Department Program.

(2) Manager is prohibited from using either the E-Verify Program or Department Program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed.

(3) If Manager obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, Manager shall:

A. Notify the subcontractor and the City's Purchasing Agent within three (3) days that Manager has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and

B. Terminate the subcontract with the subcontractor if within three (3) days of receiving the notice required pursuant to subparagraph (c)(III)A above, the subcontractor does not stop employing or contracting with the illegal alien; except that Manager shall not terminate the Agreement with the subcontractor if, during such three (3) days, the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

(4) Manager is required to comply with any reasonable request by the Colorado Department of Labor and Employment (hereinafter referred to as "CDLE") made in the course of an investigation that CDLE is undertaking pursuant to its authority under §8-17.5-102(5), C.R.S.

(d) Violation of this Section by Manager shall constitute a material breach of Agreement and grounds for immediate termination. In the event of such termination, Manager shall be liable for City's actual and consequential damages.

(e) As used in this Section, the term "subcontractor" shall mean any subcontractor or agent of Manager rendering services within the scope of this Agreement.

SECTION 14. NOTICES.

(a) Any notice required or permitted by this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if sent by certified mail or registered mail, postage and fees prepaid, addressed to the party to whom such notice is to be given at the following address or at such other address as may be subsequently furnished in writing to the other party:

If to City:
Mayor
City of Pueblo
1 City Hall Place
Pueblo, Colorado 81003

With an additional copy to:
City Attorney
City of Pueblo
1 City Hall Place

Pueblo, Colorado 81003

And

Director of Parks and Recreation
City of Pueblo
800 Goodnight Avenue
Pueblo, Colorado 81005

If to Manager:
Randal L. Bregar
Bregar Golf, LLC
41 Tierra Casa Drive
Pueblo, Colorado 81005

(b) Such notices shall be deemed to have been given when deposited in the regular United States mail.

SECTION 15. PERA LIABILITY. Manager shall reimburse the City for the full amount of any employer contribution required to be paid by the City of Pueblo to the Public Employees' Retirement Association ("PERA") for salary or other compensation paid to a PERA retiree performing contracted services for the City under this Agreement. Manager shall fill out the questionnaire attached as Exhibit C and submit the completed form to City as part of the signed Agreement.

SECTION 16. MISCELLANEOUS.

(a) Additional Documents. The Parties agree to execute any additional documents or take any additional action that may be necessary to carry out this Agreement.

(b) Force Majeure. Any delays in or failure of performance by any party of its obligations under this Agreement shall be excused if such delays or failure are a result of acts of God, pandemics, fires, floods, storms, lightning strikes, labor strikes, labor disputes, accidents, regulations, orders of civil or military authorities, shortages of labor or materials, or other causes, similar or dissimilar, which are beyond the control of such party. In the event the Restaurant and Lounge is shut down due to the COVID-19 pandemic, City and Manager will discuss a reduction in Manager's rent based upon the severity of the pandemic and the details of the shutdown. Any reduction in rent must be evidenced by a signed written amendment to be effective.

(c) Binding Effect**.** This Agreement shall inure to the benefit of, and be binding upon, the Parties, their respective legal representatives, successors, and assigns; provided, however, that nothing in this paragraph shall be construed to permit the assignment of this Agreement except as otherwise expressly authorized herein.

(d) Section Captions**.** The captions of the paragraphs are set forth only for the convenience and reference of the Parties and are not intended in any way to define, limit, or describe the scope or intent of this Agreement.

(e) Integrations, Severability, Amendment, and Counterparts. This Agreement represents the entire agreement between the parties and supersedes all prior discussions and written agreements or understandings. This Agreement may be amended only by an instrument in writing signed by the parties. If any provision of this Agreement is held invalid or unenforceable, no other provision shall be affected by such holding, and all of the remaining provisions of this Agreement shall continue in full force and effect. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which together constitute one and the same agreement.

(f) No Third Party Beneficiaries; No Waiver of Immunities. Nothing in this Agreement is intended, nor should it be construed, to create any rights, claims, or benefits or assume any liability for or on behalf of any third party, or to waive any immunities or limitations conferred under federal or state law, including but not limited to the Colorado Governmental Immunity Act, § 24-10-101 et seq., C.R.S.

(g) Waiver of Breach. A waiver by any party to this Agreement of the breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by either party.

(h) Authority of Signers. Each person signing this Agreement on behalf of a party represents and warrants that he or she has the requisite power and authority to enter into, execute, and deliver this Agreement on behalf of such party and that this Agreement is a valid and legally binding obligation of such party enforceable against it in accordance with its terms.

(i) Attorney's Fees and Costs of Collections. In the event that it becomes necessary for the City to bring any action or proceeding to collect unpaid utilities, damages, janitorial fees, costs, or other sums due under this Agreement, to enforce any provision of this Agreement, to recover damages for Manager’s breach of this Agreement, or to seek specific performance of this Agreement, the City shall be entitled to collect its reasonable attorneys fees, costs of suit, and costs of collection as part of the judgment in such action or proceeding.

(j) Relationship. Nothing in this Agreement is intended to, nor shall be deemed to constitute, a partnership or joint venture between the parties, or to create any agency or partner relationship between the parties. Neither party shall hold itself out as a partner, joint venture, agent, or representative of the other under this Agreement.

(k) Assignment. This Agreement shall not be assigned by Manager without the prior written consent of the City, which consent may be granted, denied, or conditioned in City’s sole and absolute discretion.

(l) Disputes. In the event a dispute arises between Manager and Director with respect to any provision of this Agreement or the obligations or performance of either the City or Manager hereunder, the Director or Manager may submit such dispute to the Mayor for resolution and determination. If such dispute is submitted to the Mayor for resolution, his or her decision thereon shall be binding upon all parties.

(m) Governing Law and Venue**.** This Agreement shall be governed by the laws of the State of Colorado. Venue for any action arising under this Agreement or for the enforcement of this Agreement shall be in a state court with jurisdiction located in Pueblo County, Colorado.

(n) Certain Provisions Survive Expiration of Term and Termination**.** The provisions of this Agreement pertaining to indemnification, releases, covenants not to sue, providing draft and completed work product to the City, and liability, shall survive both the expiration of the term of this Agreement and termination of this Agreement, and such terms shall continue in effect for a period of five years following the termination of this Agreement and for such further time as it may take to completely and finally negotiate, settle, or litigate any claim or suit concerning the same.

(o) No Multi-Fiscal Year Obligation on City. This Agreement is expressly made subject to the limitations of the Colorado Constitution. Nothing herein shall constitute, nor deemed to constitute, the creation of a debt or multi-year fiscal obligation or an obligation of future appropriations by the City Council of Pueblo, contrary to Article X, § 20 Colorado Constitution or any other constitutional, statutory or charter debt limitation. Notwithstanding any other provision of this Agreement, with respect to any financial obligation of the City which may arise under this Agreement in any fiscal year, in the event the budget or other means of appropriations for any such year fails to provide funds in sufficient amounts to discharge such obligation, such failure shall not constitute a default or breach of this Agreement, including any sub-agreement, attachment, schedule, or exhibit thereto, by the City.

(p) Prior Agreements Between the Parties. In the event that any term of this Agreement conflicts with, or is construed to conflict with, any provision of any other contract, lease, or agreement between the City or any of its enterprises and Manager, including but not limited to the Elmwood Golf Course Management Agreement dated December 1, 2008, the provisions of this Agreement shall control.

Executed the day and year first above written.

CITY OF PUEBLO, A MUNICIPAL CORPORATION	BREGAR GOLF, LLC
By_____	By_____

Nicholas A. Gradisar, Mayor

Randal L. Bregar, President

Attest:_____
City Clerk

Attest:_____
Secretary

APPROVED AS TO FORM:

_____
City Attorney

GUARANTY

In consideration of the City of Pueblo, a Municipal Corporation, approving and executing the foregoing Lease and Management Agreement, the undersigned Randal L. Bregar does hereby personally guarantee the performance of the Lease and Management Agreement by Bregar Golf, LLC. In the event of default by Bregar Golf, LLC of any provision of the Lease and Management Agreement and written notice thereof is given to Randal L. Bregar, Randal L. Bregar will timely cure such default and perform all of the covenants and provisions of the Lease and Management Agreement to be performed by Bregar Golf, LLC.

Signed on _____, 20__

_____
Randy L. Bregar

EXHIBIT A

LEASED PREMISES
RESTAURANT AND LOUNGE AND OPTIONAL PREMISES
FLOOR PLAN

EXHIBIT B

LIST OF CITY'S PROPERTY
INVENTORY

EXHIBIT C

PERA QUESTIONNAIRE